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IN THE

Supreme Court of the United States

October Term, 1963
No. 5, Original

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF CALIFORNIA,

Defendant.

ANSWER OF STATE OF CALIFORNIA TO SUPPLEMENTAL COMPLAINT.

Comes now defendant, State of California, by its Attorney General, and, answering the supplemental complaint herein, admits, denies and avers as follows:

I.

Admits the averments of Paragraphs I, II and III of the supplemental complaint.

II.

Answering Paragraph IV of the supplemental complaint:

Admits the averments of Paragraph IV.

Avers that the Special Master's Report of October 14, 1952, and the answers recommended therein, have no present validity in relation to the existing controversy between the United States and the State of California pertaining to the location of the State's boundary on the

continental shelf, and in support thereof further avers as follows:

1. That said Report was for the sole purpose of defining with particularity certain portions of the area covered by this Court's decree of October 27, 1947 (332 U.S. 804, 805).

2. That insofar as it related to the right to exploit the seabed and subsoil of the continental shelf, said decree of October 27, 1947, was nullified by the enactment of the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. §§ 1301-15, on May 22, 1953, which Act is determinative of the existing controversy.

3. That the terms of the Submerged Lands Act, as well as this Court's decision in *United States v. Louisiana,* 363 U.S. 1 (1960), establish that the determination of the rights of the parties under said Act does not involve a question of external sovereignty, but is a question of wholly domestic concern within the power of Congress to resolve, and that a state's ownership is to be defined in terms of state territorial boundaries.

4. That the Special Master's Report of October 14, 1952, is predicated entirely upon the erroneous premise that the determination as to the rights of the parties involved a question of the territorial jurisdiction of the United States as against foreign nations, *i.e.,* a question of external sovereignty; that based upon this erroneous premise, the Special Master regarded as immaterial the location of California's territorial boundaries and such boundaries were improperly excluded from consideration in the formulation of the recommended answers contained in said Report.

5. That said 1952 Report likewise does not consider the effect of other material events occurring subsequent to the date of its filing, including, but not limited to: court decisions such as *Alabama v. Texas,* 347 U.S. 272 (1954), *Superior Oil Co. v. Fontenot,* 213 F. 2d 565 (5th Cir.), *cert. denied,* 348 U.S. 837 (1954), *Justheim v. McKay,* 123 F. Supp. 560 (D.D.C. 1954), *aff'd,* 229 F. 2d 29 (D.C. Cir.), *cert. denied,* 351 U.S. 933 (1956), *United States v. Louisiana,* 363 U.S. 1 (1960), and *United States v. Florida,* 363 U.S. 121 (1960), all relating to the construction or effect of the Submerged Lands Act; the enactment of the Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U.S.C. §§ 1331-43, in 1953; and (to whatever extent the present controversy may be affected by principles of international law or United States foreign policy) the ratification by the United States in 1961, upon the advice and consent of the United States Senate, of the Convention on the Territorial Sea and the Contiguous Zone (U. N. Doc. A/Conf. 13/L. 52), which Convention is the best evidence of international law on the subject of inland waters at the present time and is expressive of the present policy of the United States.

Avers that, for the reasons heretofore stated in this Paragraph of the Answer, the Special Master's Report of October 14, 1952, should be rejected or disregarded by this Court and the same or another Special Master should be appointed to render a new report which will take into consideration the aforementioned material events which have occurred subsequent to the filing of the October 14, 1952 Report.

III.

Answering Paragraph V of the supplemental complaint:

Admits that on May 22, 1953, the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. §§ 1301-15, was appproved by the President and took effect.

Denies generally and specifically each and every other allegation set forth in said Paragraph.

Avers that the terms of the Submerged Lands Act are as set forth therein, and that such terms must be construed in accordance with the purpose and effect of said Act, which purpose was to recognize, confirm and establish, and said Act did recognize, confirm and establish, the State's title to, and ownership of, all lands beneath navigable waters within the State's territorial boundaries.

IV.

Admits the averments of Paragraph VI of the supplemental complaint.

V.

Answering Paragraph VII of the supplemental complaint:

Denies generally and specifically each and every averment contained in said Paragraph.

Avers that Section 9 of the Submerged Lands Act, 67 Stat. 32, 43 U.S.C. § 1302, provides as follows:

> "Nothing in this Act shall be deemed to affect in any wise the rights of the United States to the natural resources of that portion of the subsoil and seabed of the Continental Shelf lying seaward and outside of the area of lands beneath navigable wa-

ters, as defined in section 2 hereof, all of which natural resources appertain to the United States, and the jurisdiction and control of which by the United States is hereby confirmed."

VI.

Answering Paragraph VIII of the supplemental complaint:

Denies generally and specifically each and every averment contained in said Paragraph.

Avers that the United States and the State of California are now in disagreement as to the meaning of the terms "line of ordinary low water" and "inland waters" as said terms are used in the Submerged Lands Act; that the decree of October 27, 1947 (332 U.S. 804, 805), insofar as it related to the right to exploit the seabed and subsoil of the continental shelf, was nullified by passage of said Act; and that the present disagreement involves different legal and factual questions from those submitted to the Special Master and as to which he reported his recommendations to the Court, in that these questions must now be resolved in accordance with the history, purpose and effect of said Act, rather than said decree, and must take into consideration numerous other events which have occurred subsequent to the date of said Special Master's Report, including, but not limited to, construction and interpretation of the Submerged Lands Act, the enactment of the Outer Continental Shelf Lands Act in 1953, and (to whatever extent the present controversy may be affected by principles of international law or United States foreign policy) the ratification by the United States in 1961 of the Convention on the Territorial Sea and the Contiguous Zone.

VII.

Answering Paragraph IX of the supplemental complaint:

Denies generally and specifically each and every averment contained in said Paragraph.

Avers that the term "ordinary low-water mark," which appears in Paragraph IX of the supplemental complaint, is not used in the Submerged Lands Act.

Avers that the term "line of ordinary low water" is used in the Submerged Lands Act, 67 Stat. 29, § 2(c), 43 U.S.C. § 1301(c).

Avers that the term "line of ordinary low water" as used in the Submerged Lands Act, and the term "ordinary low-water mark" as used in the Court's decree of October 27, 1947 (332 U.S. 804, 805), each means the line where the plane of mean lower low water meets the shore of the mainland, an island or rock, or a low-tide elevation, as the shore may be modified at any time by either natural or artificial means, or both.

VIII.

Answering Paragraph X of the supplemental complaint:

Denies that the term "inland waters" as used in the decree of October 27, 1947, and as used in the Submerged Lands Act, has the same meaning; and denies generally and specifically each and every averment contained in said Paragraph.

Avers that the term "inland waters" as used in the Submerged Lands Act means, and includes, but is not limited to, each and all of the following:

(a) Rivers, each bounded seaward by a line, of whatever length, between the headlands at the line

of ordinary low water as defined in Paragraph VII above;

(b) Bays, as such term is used and clarified in Article XII of California's Constitution of 1849 (approved by Congress in the California Admission Act of September 9, 1850, 9 Stat. 452), in Article XXI of California's Constitution of 1879, and in California Government Code sections 170, 171, and 172 (added by chapter 65, California Statutes of 1949);

(c) Historic bays and waters;

(d) Bays, each bounded seaward by a closing line not exceeding 24 geographical miles in length, drawn at the line of ordinary low water, as defined in Paragraph VII above, between the headlands (or, if that distance exceeds 24 geographical miles then within the bay so as to include the greatest amount of water possible within a line not exceeding 24 geographical miles in length), provided that the area of the bay is as large as, or larger than, that of a semi-circle whose diameter is a line drawn across its mouth;

(e) Harbors, including all areas bounded seaward by the outermost works and installations thereof, and also including all anchorages reasonably related to the physical surroundings and the service requirements of any harbor;

(f) All waters within straight baselines joining appropriate points either where the coast line is deeply indented and cut into, or where there is a fringe of islands along the coast in its immediate vicinity.

(g) All waters between the mainland and the outermost of the islands, reefs and rocks along and adjacent to the coast of the State of California, and all waters between the islands, reefs, and rocks themselves.

IX.

Answering Paragraph XI of the supplemental complaint:

Denies generally and specifically each and every averment contained in said Paragraph.

Avers that the national boundaries of the United States insofar as they pertain to the subsoil and seabed extend to the edge of the continental shelf; that the subsoil and seabed of the outer continental shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition, as provided in the Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U.S.C. § 1332; that the term "outer continental shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in Section 2(a) of the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. § 1301 (a), and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control; that as recognized by the case of *United States v. Louisiana,* 363 U.S. 1 (1960) the division of the submerged lands of the continental shelf between the United States and the respective states is a matter of wholly domestic concern within the power of Congress to resolve; that pursuant to Congressional enactment of the Submerged Lands Act the State of California has title to and ownership of that portion of the continental shelf lying

beneath navigable waters within its boundaries, including the natural resources within such lands and waters.

X.

Answering Paragraph XII of the supplemental complaint:

Except as herein expressly averred, denies generally and specifically each and every averment contained in said Paragraph.

Avers that the State of California claims a right, title or interest in and to submerged lands or resources claimed by the United States in its supplemental complaint.

WHEREFORE, the State of California prays:

1. That this Court declare that its prior decree of October 27, 1947, in the case of *United States v. California,* 332 U.S. 804, 805, insofar as it related to the right to exploit the seabed and subsoil of the continental shelf, has been nullified by the enactment of the Submerged Lands Act of May 22, 1953, 67 Stat. 29, 43 U.S.C. §§ 1301-15;

2. That the Special Master's Report of October 14, 1952, be rejected by this Court, and the same or another Special Master be appointed with directions to: (a) consider evidence already presented and to receive additional relevant evidence offered by either party; and (b) render a new Report which will take into consideration material events, including those specified in Paragraph II of this Answer, which have occurred subsequent to the filing of the said October 14, 1952 Report;

3. That, in the alternative, this Court enter its decree declaring that the coast line of the State of California, for purposes of the Submerged Lands Act, is the line of ordinary low water as set forth in Paragraph VII hereof along that portion of the coast which is in direct contact with the open sea, and the line marking the seaward limit of inland waters as set forth in Paragraph VIII hereof; and that the State of California has title to and ownership of, and the right and power to manage, administer, lease, develop, and use all lands beneath navigable waters, and the natural resources within such lands and waters, lying landward of a line three geographical miles seaward from said coast line;

4. For such other and further relief as this Honorable Court may deem just and proper.

STANLEY MOSK,
Attorney General of California.

February 1964.

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